



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-HQ-ES-2018-0097; FF09E22000 FXES1113090FEDR 223]

RIN 1018-BD60

### Endangered and Threatened Wildlife and Plants; Reinstatement of Endangered Species Act Protections for the Gray Wolf (*Canis lupus*) in Compliance with Court Order

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a district court order that vacated our November 3, 2020, rule removing the gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife. As a result of the court's order, the regulatory protections under the Endangered Species Act of 1973, as amended (Act), apply to the gray wolf in all or portions of the 45 U.S. States and Mexico where the species was listed at the time we issued the delisting rule. The court order went into effect on February 10, 2022, and is the subject of several consolidated, pending appeals in the Ninth Circuit. While those appeals are pending, the Service is bound by the district court's order. Thus, this final rule implements the court's order by correcting the Code of Federal Regulations and officially reinstating threatened status for gray wolf in Minnesota; endangered status for gray wolf in all or portions of the remaining 44 U.S. States and Mexico where the species was listed prior to our November 2020 delisting rule; critical habitat for gray wolf in Minnesota and Michigan; and the rule promulgated under section 4(d) of the Act for gray wolf in Minnesota. Gray wolves in Montana, Idaho, Wyoming, the eastern third of Washington and Oregon, and north-

central Utah (collectively, the Northern Rocky Mountains) retain their delisted status and are not affected by this final rule. This rule does not have any effect on the separate listing of the Mexican wolf subspecies (*Canis lupus baileyi*) as endangered under the Act.

**DATES:** This action is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, the court order had legal effect immediately upon its filing on February 10, 2022.

**ADDRESSES:** This final rule is available on the internet at <https://www.regulations.gov> in Docket No. FWS-HQ-ES-2018-0097.

**FOR FURTHER INFORMATION CONTACT:** Rachel London, Chief, Branch of Delisting and Foreign Species, Ecological Services, U.S. Fish and Wildlife Service, Headquarters Office, MS:ES, 5275, Leesburg Pike, Falls Church, VA 22041–3803; telephone (703) 358–2491. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On November 3, 2020, we published a final rule to remove the gray wolf entities that were listed at that time in the lower 48 United States and Mexico from the Federal List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11(h) (85 FR 69778; hereafter referred to as “our 2020 delisting rule”). Additional background information on the gray wolf in the lower 48 United States and Mexico and on that rulemaking decision, including previous Federal actions, can be found in our 2020 delisting rule. The rule became effective on January 4, 2021.

Three lawsuits challenging our 2020 delisting rule were filed in the U.S. District Court for the Northern District of California. *Defenders of Wildlife v. U.S. Fish and Wildlife Service*, No. 21-00344 (N.D. Cal.), *WildEarth Guardians v. Bernhardt*, No. 21-00349 (N.D. Cal.), *NRDC v. U.S. Department of the Interior*, No. 21-00561 (N.D. Cal.). On February 10, 2022, the district court vacated and remanded our 2020 delisting rule. That decision reinstated Federal protections that were in place prior to the effective date of our 2020 delisting rule. Therefore, gray wolves are once again listed as threatened in Minnesota and endangered in all or portions of 44 U.S. States and Mexico. See *Effects of the Rule*, below, for a description of the CFR changes resulting from this final rule.

Multiple parties, including the Service, appealed the district court's order to the U.S. Court of Appeals for the Ninth Circuit (Nos. 21-16382, 16383, 16384, 22-15529, 15532, 15534, 15535, 15536, 15537, 15262, 15627, 15628). The parties have been engaged in mediation. On January 26, 2023, the Circuit Mediator issued an order temporarily staying the appeals for administrative purposes until February 2, 2024. During the abeyance, the Service is updating the status review for the gray wolf throughout the lower 48 United States and commencing a stakeholder engagement effort.

### **Administrative Procedure**

To comply with the February 10, 2022, court order, we must reinstate the following:

- Threatened species status for gray wolf in Minnesota,
- Endangered species status for gray wolf in all or portions of 44 U.S. States and Mexico,
- Critical habitat designation for gray wolf in Minnesota and Michigan, and
- A section 4(d) rule for gray wolf in Minnesota.

Therefore, the Director has determined, pursuant to 5 U.S.C. 553(b), that prior notice and opportunity for public comment are impractical and unnecessary. The Director

has further determined, pursuant to 5 U.S.C. 553(d), that the agency has good cause to make this rule effective upon publication.

We are also making the following technical revisions to the section 4(d) rule at 50 CFR 17.40(d):

- (1) correcting the misspelling of “Hoodoo Point” in § 17.40(d)(1)(i);
- (2) correcting the misspelling of “the Duluth, Missabe and Iron Range Railroad” in § 17.40(d)(1)(ii);
- (3) substituting a higher quality image of the map of regulatory zones that appears in § 17.40(d)(1)(vi); and
- (4) updating the contact information for providing notifications to the Service in § 17.40(d)(2)(D).

Rather than make these changes in a separate rulemaking, we are combining them with the section 4(d) rule reinstatement for administrative convenience. The Director has determined, pursuant to 5 U.S.C. 553(b), that prior notice and an opportunity for public comment on these revisions are unnecessary because the changes are insignificant in nature and impact and inconsequential to the public.

### **Effects of the Rule**

As a result of the February 10, 2022, district court order, any and all gray wolves in Minnesota are listed as threatened, and any and all gray wolves in all or portions of 44 U.S. States and Mexico are listed as endangered. In the United States, this includes: all of Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Michigan, Missouri, Mississippi, North Carolina, North Dakota, Nebraska, New Hampshire, New Jersey, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Vermont, West Virginia, and Wisconsin; and portions of Arizona, New Mexico, Oregon, Utah, and

Washington (as depicted in figure 1 below and our November 3, 2020, delisting rule; 85 FR 69778 at 69782).

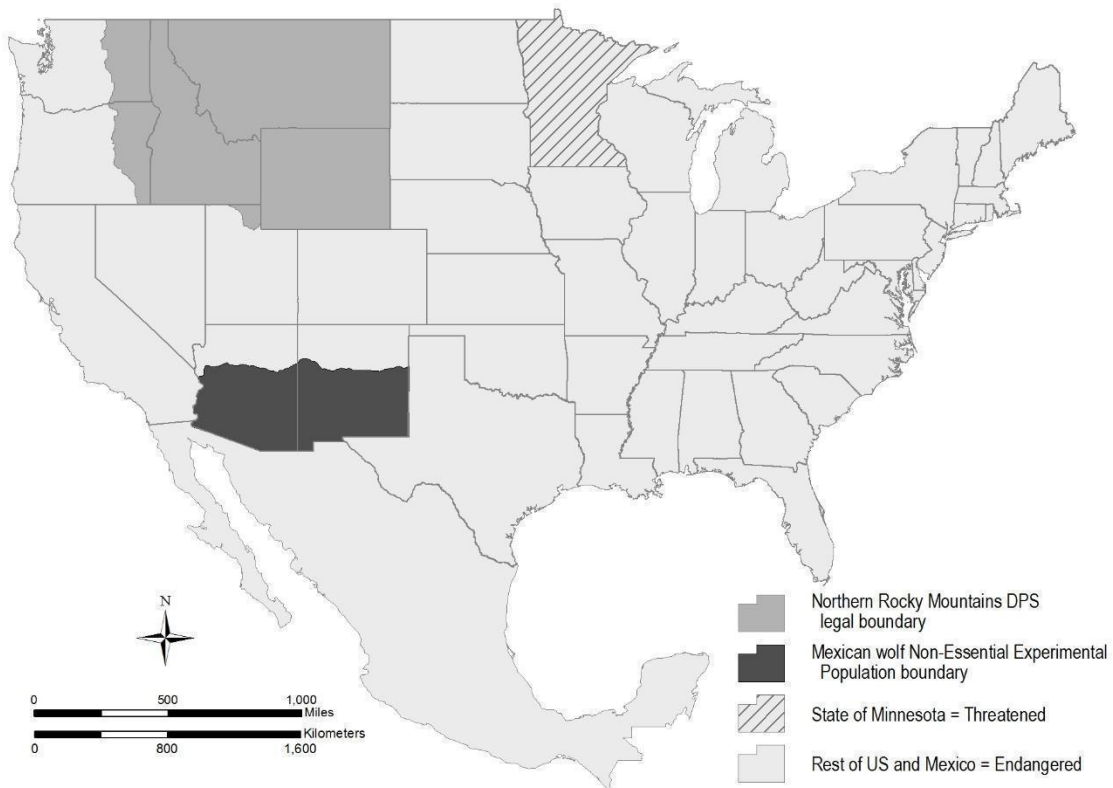


Figure 1. Current legal status of *C. lupus* under the Act in the lower 48 United States and Mexico following the February 10, 2022, court decision. The Northern Rocky Mountains distinct population segment (DPS) and the Mexican wolf nonessential experimental population are not part of the listed entities. All map lines are approximations; see 50 CFR 17.11 and 17.84(k) for exact boundaries.

The reinstated regulations at 50 CFR 17.95(a) designate critical habitat for gray wolf in Minnesota and Michigan, and the reinstated regulations at 50 CFR 17.40(d) govern the regulation of gray wolf in Minnesota. The provisions of these regulations are the same as those in the regulations that were removed by our 2020 delisting rule (November 3, 2020; 85 FR 69778 at 69895).

This rule does not affect the status of gray wolf in Montana, Idaho, Wyoming, the eastern third of Washington and Oregon, and north-central Utah. Wolves in these areas retain their delisted status and will continue to be managed by the States and Tribes. Finally, this rule does not affect the gray wolf's Appendix II status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

## **Future Actions**

By February 2, 2024, the Service intends to submit to the Office of the Federal Register a proposed rule concerning the listing status of gray wolves in the lower 48 United States under the Act. Our status determination will be based on the best available information as of the time of publication. If the appeals described earlier in this document nonetheless proceed and the district court's order is reversed, then the Service will take appropriate action to comply with and implement the Court of Appeals' judgment, including, if required, publishing another final rule reinstating the Service's 2020 delisting rule.

## **Authors**

The primary authors of this final rule are the staff members of the U.S. Fish and Wildlife Service's Headquarters Office.

## **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## **Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### **PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

1. The authority citation for part 17 continues to read as follows:

**AUTHORITY:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

2. Amend § 17.11, in paragraph (h), by adding two entries for “Wolf, gray” in alphabetic order under Mammals in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
* * * *	* * *			
Wolf, gray	<i>Canis lupus</i>	<p>U.S.A.: All of AL, AR, CA, CO, CT, DE, FL, GA, IA, IN, IL, KS, KY, LA, MA, MD, ME, MI, MO, MS, NC, ND, NE, NH, NJ, NV, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, and WV; and portions of AZ, NM, OR, UT, and WA as follows:</p> <p>(1) Northern AZ (that portion north of the centerline of Interstate Highway 40);</p> <p>(2) Northern NM (that portion north of the centerline of Interstate Highway 40);</p> <p>(3) Western OR (that portion of OR west of the centerline of Highway 395 and Highway 78 north of Burns Junction and that portion of OR west of the centerline of Highway 95 south of Burns Junction);</p> <p>(4) Most of UT (that portion of UT south and west of the centerline of Highway 84 and that portion of UT south of Highway 80 from Echo to the UT/WY Stateline); and</p> <p>(5) Western WA (that portion of WA west of the centerline of Highway 97 and Highway 17 north of Mesa and that portion of WA west of the centerline of Highway 395 south of Mesa).</p> <p>Mexico.</p>	E	<p>32 FR 4001, 3/11/1967;</p> <p>41 FR 24062, 6/14/1976;</p> <p>43 FR 9607, 3/9/1978;</p> <p>73 FR 75356, 12/11/2008;</p> <p>74 FR 47483, 9/16/2009;</p> <p>80 FR 9218, 2/20/2015;</p> <p>50 CFR 17.95(a).<sup>CH</sup></p>
Wolf, gray	<i>Canis lupus</i>	U.S.A. (MN)	T	<p>43 FR 9607, 3/9/1978;</p> <p>50 CFR 17.40(d);<sup>4(d)</sup></p> <p>50 CFR 17.95(a).<sup>CH</sup></p>
* * * *	* * *			



3. Amend § 17.40 by adding paragraph (d) to read as follows:

**§ 17.40 Special rules—mammals.**

\* \* \* \* \*

(d) **Gray wolf** (*Canis lupus*) in Minnesota.

(1) *Zones*. For purposes of these regulations, the State of Minnesota is divided into the following five zones:

(i) Zone 1—4,488 square miles. Beginning at the point of intersection of United States and Canadian boundaries in Section 22, Township 71 North, Range 22 West, in Rainy Lake, then proceeding along the west side of Sections 22, 27, and 34 in said Township and Sections 3, 10, 15, 22, 27, and 34 in Township 70 North, Range 22 West and Sections 3 and 10 in Township 69 North, Range 22 West; then east along the south boundaries of Sections 10, 11, and 12 in said Township; then south along the Koochiching and St. Louis Counties line to Highway 53; thence southeasterly along State Highway 53 to the junction with County Route 765; thence easterly along County Route 765 to the junction with Kabetogama Lake in Ash River Bay; thence along the south boundary of Section 33 in Township 69 North, Range 19 West, to the junction with the Moose River; thence southeasterly along the Moose River to Moose Lake; thence along the western shore of Moose Lake to the river between Moose Lake and Long Lake; thence along the said river to Long Lake; thence along the east shore of Long Lake to the drainage on the southeast side of Long Lake in NE<sup>1</sup>/<sub>4</sub>, Section 18, Township 67 North, Range 18 West; thence along the said drainage southeasterly and subsequently northeasterly to Marion Lake, the drainage being in Sections 17 and 18, Township 67 North, Range 18 West; thence along the west shoreline of Marion Lake proceeding southeasterly to the Moose Creek; thence along Moose Creek to Flap Creek; thence southeasterly along Flap Creek to the Vermilion River; thence southerly along the Vermilion River to Vermilion Lake; thence along the Superior National Forest boundary

in a southeasterly direction through Vermilion Lake passing these points: Oak Narrows, Muskrat Channel, South of Pine Island, to Hoodoo Point and the junction with County Route 697; thence southeasterly on County Route 697 to the junction with State Highway 169; thence easterly along State Highway 169 to the junction with State Highway 1; thence easterly along State Highway 1 to the junction with the Erie Railroad tracks at Murphy City; thence easterly along the Erie Railroad tracks to the junction with Lake Superior at Taconite Harbor; thence northeasterly along the North Shore of Lake Superior to the Canadian Border; thence westerly along the Canadian Border to the point of beginning in Rainy Lake.

(ii) Zone 2—1,856 square miles. Beginning at the intersection of the Erie Mining Co. Railroad and State Highway 1 (Murphy City); thence southeasterly on State Highway 1 to the junction with County Road 4; thence southwesterly on County Road 4 to the State Snowmobile Trail (formerly the Alger-Smith Railroad); thence southwesterly to the intersection of the Old Railroad Grade and Reserve Mining Co. Railroad in Section 33 of Township 56 North, Range 9 West; thence northwesterly along the Railroad to Forest Road 107; thence westerly along Forest Road 107 to Forest Road 203; thence westerly along Forest Road 203 to the junction with County Route 2; thence in a northerly direction on County Route 2 to the junction with Forest Road 122; thence in a westerly direction along Forest Road 122 to the junction with the Duluth, Missabe and Iron Range Railroad; thence in a southwesterly direction along the said railroad tracks to the junction with County Route 14; thence in a northwesterly direction along County Route 14 to the junction with County Route 55; thence in a westerly direction along County Route 55 to the junction with County Route 44; thence in a southerly direction along County Route 44 to the junction with County Route 266; thence in a southeasterly direction along County Route 266 and subsequently in a westerly direction to the junction with County Road 44; thence in a northerly direction on County Road 44 to the junction with

Township Road 2815; thence westerly along Township Road 2815 to Alden Lake; thence northwesterly across Alden Lake to the inlet of the Cloquet River; thence northerly along the Cloquet River to the junction with Carrol Trail-State Forestry Road; thence west along the Carrol Trail to the junction with County Route 4 and County Route 49; thence west along County Route 49 to the junction with the Duluth, Winnipeg and Pacific Railroad; thence in a northerly direction along said Railroad to the junction with the Whiteface River; thence in a northeasterly direction along the Whiteface River to the Whiteface Reservoir; thence along the western shore of the Whiteface Reservoir to the junction with County Route 340; thence north along County Route 340 to the junction with County Route 16; thence east along County Route 16 to the junction with County Route 346; thence in a northerly direction along County Route 346 to the junction with County Route 569; thence along County Route 569 to the junction with County Route 565; thence in a westerly direction along County Route 565 to the junction with County Route 110; thence in a westerly direction along County Route 110 to the junction with County Route 100; thence in a north and subsequent west direction along County Route 100 to the junction with State Highway 135; thence in a northerly direction along State Highway 135 to the junction with State Highway 169 at Tower; thence in an easterly direction along the southern boundary of Zone 1 to the point of beginning of Zone 2 at the junction of the Erie Railroad Tracks and State Highway 1.

(iii) Zone 3—3,501 square miles. Beginning at the junction of State Highway 11 and State Highway 65; thence southeasterly along State Highway 65 to the junction with State Highway 1; thence westerly along State Highway 1 to the junction with State Highway 72; thence north along State Highway 72 to the junction with an un-numbered township road beginning in the northeast corner of Section 25, Township 155 North, Range 31 West; thence westerly along the said road for approximately seven (7) miles to the junction with SFR 95; thence westerly along SFR 95 and continuing west through the

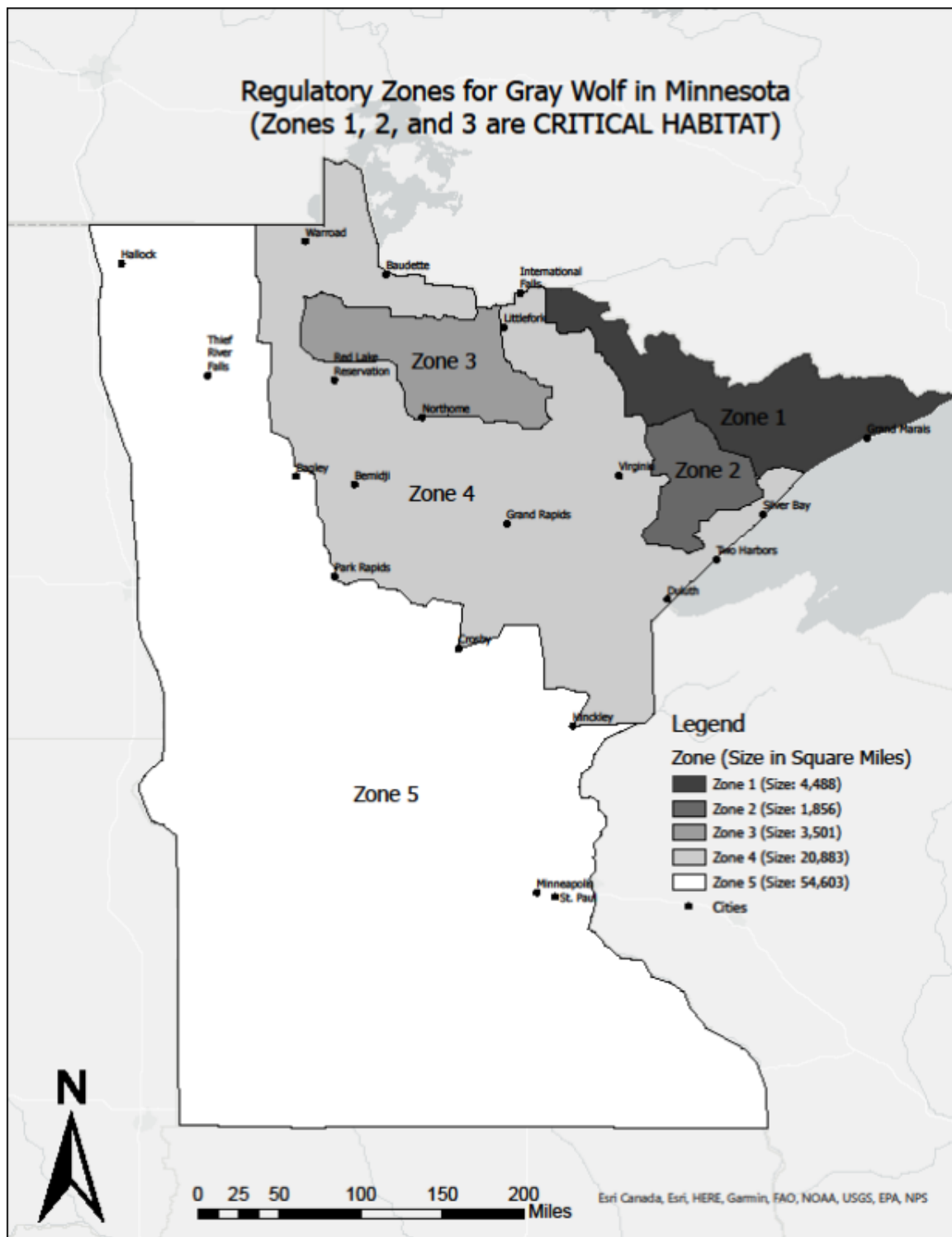
southern boundary of Sections 36 through 31, Township 155 North, Range 33 West, through Sections 36 through 31, Township 155 North, Range 34 West, through Sections 36 through 31, Township 155 North, Range 35 West, through Sections 36 and 35, Township 155 North, Range 36 West to the junction with State Highway 89, thence northwesterly along State Highway 89 to the junction with County Route 44; thence northerly along County Route 44 to the junction with County Route 704; thence northerly along County 704 to the junction with SFR 49; thence northerly along SFR 49 to the junction with SFR 57; thence easterly along SFR 57 to the junction with SFR 63: thence south along SFR 63 to the junction with SFR 70; thence easterly along SFR 70 to the junction with County Route 87; thence easterly along County Route 87 to the junction with County Route 1; thence south along County Route 1 to the junction with County Route 16; thence easterly along County Route 16 to the junction with State Highway 72; thence south on State Highway 72 to the junction with a gravel road (un-numbered County District Road) on the north side of Section 31, Township 158 North, Range 30 West; thence east on said District Road to the junction with SFR 62; thence easterly on SFR 62 to the junction with SFR 175; thence south on SFR 175 to the junction with County Route 101; thence easterly on County Route 101 to the junction with County Route 11; thence easterly on County Route 11 to the junction with State Highway 11; thence easterly on State Highway 11 to the junction with State Highway 65, the point of beginning.

(iv) Zone 4—20,883 square miles. Excluding Zones 1, 2 and 3, all that part of Minnesota north and east of a line beginning on State Trunk Highway 48 at the eastern boundary of the State; thence westerly along Highway 48 to Interstate Highway 35; thence northerly on I-35 to State Highway 23, thence west one-half mile on Highway 23 to State Trunk Highway 18; thence westerly along Highway 18 to State Trunk Highway 65, thence northerly on Highway 65 to State Trunk Highway 210; thence westerly along

Highway 210 to State Trunk Highway 6; thence northerly on State Trunk Highway 6 to Emily; thence westerly along County State Aid Highway (CSAH) 1, Crow Wing County, to CSAH 2, Cass County; thence westerly along CSAH 2 to Pine River; thence northwesterly along State Trunk Highway 371 to Backus; thence westerly along State Trunk Highway 87 to U.S. Highway 71; thence northerly along U.S. 71 to State Trunk Highway 200; thence northwesterly along Highway 200, to County State Aid Highway (CSAH) 2, Clearwater County; thence northerly along CSAH 2 to Shevlin; thence along U.S. Highway 2 to Bagley; thence northerly along State Trunk Highway 92 to Gully; thence northerly along CSAH 2, Polk County, to CSAH 27, Pennington County; thence along CSAH 27 to State Trunk Highway 1; thence easterly on Highway 1 to CSAH 28, Pennington County; thence northerly along CSAH 28 to CSAH 54, Marshall County, thence northerly along CSAH 54 to Grygla; thence west and northerly along Highway 89 to Roseau; thence northerly along State Truck Highway 310 to the Canadian border.

(v) Zone 5—54,603 square miles. All that part of Minnesota south and west of the line described as the south and west border of Zone 4.

(vi) Map of regulatory zones follows:



(2) *Prohibitions.* The following prohibitions apply to the gray wolf in Minnesota.

(i) *Taking.* Except as provided in this paragraph (d)(2)(i) of this section, no person may take a gray wolf in Minnesota.

(A) Any person may take a gray wolf in Minnesota in defense of his own life or the lives of others.

(B) Any employee or agent of the Service, any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota without a permit if such action is necessary to:

- (1) Aid a sick, injured, or orphaned specimen; or
- (2) Dispose of a dead specimen; or
- (3) Salvage a dead specimen which may be useful for scientific study.

(C) Designated employees or agents of the Service or the Minnesota Department of Natural Resources may take a gray wolf without a permit in Minnesota, in zones 2, 3, 4, and 5, as delineated in paragraph (d)(1) of this section, in response to depredations by a gray wolf on lawfully present domestic animals: Provided, that such taking must occur within one-half mile of the place where such depredation occurred and must be performed in a humane manner: And provided further, that any young of the year taken on or before August 1 of that year must be released.

(D) Any taking pursuant to paragraph (d)(2)(i)(A), (d)(2)(i)(B), or (d)(2)(i)(C) of this section must be reported by email to the Twin Cities Ecological Service Field Office at [twincities@fws.gov](mailto:twincities@fws.gov) within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(E) Any employee or agent of the Service or the Minnesota Department of Natural Resources, when operating under a Cooperative Agreement with the Service signed in accordance with section 6(c) of the Endangered Species Act of 1973, who is designated by the Service or the Minnesota Department of Natural Resources for such purposes, may, when acting in the course of his or her official duties, take a gray wolf in Minnesota to carry out scientific research or conservation programs.

(ii) *Export and commercial transactions.* Except as may be authorized by a permit issued under § 17.32, no person may sell or offer for sale in interstate commerce, import

or export, or in the course of a commercial activity transport, ship, carry, deliver, or receive any Minnesota gray wolf.

(iii) *Unlawfully taken wolves*. No person may possess, sell, deliver, carry, transport, or ship, by any means whatsoever, a gray wolf taken unlawfully in Minnesota, except that an employee or agent of the Service, or any other Federal land management agency, or the Minnesota Department of Natural Resources, who is designated by his/her agency for such purposes, may, when acting in the course of his official duties, possess, deliver, carry, transport, or ship a gray wolf taken unlawfully in Minnesota.

(3) *Permits*. All permits available under § 17.32 (General Permits—Threatened Wildlife) are available with regard to the gray wolf in Minnesota. All the terms and provisions of § 17.32 apply to such permits issued under the authority of this paragraph (d)(3).

\* \* \* \* \*

4. Amend § 17.95, in paragraph (a), by adding an entry for “Gray Wolf (*Canis lupus*)” after the entry for “Amargosa Vole (*Microtus californicus scirpensis*)” to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

(a) *Mammals*.

\* \* \* \* \*

**Gray Wolf (*Canis lupus*)**

*Michigan*. Isle Royale National Park.

*Minnesota*. Areas of land, water, and airspace in Beltrami, Cook, Itasca, Koochiching, Lake, Lake of the Woods, Roseau, and St. Louis Counties, with boundaries (4th and 5th Principal meridians) identical to those of zones 1, 2, and 3, as delineated in 50 CFR 17.40(d)(1).

\* \* \* \* \*



**Stephen Guertin,**  
*Acting Director,*  
*U.S. Fish and Wildlife Service.*

[FR Doc. 2023-24299 Filed: 11/2/2023 8:45 am; Publication Date: 11/3/2023]